IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5405 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SANJAY HARIBHAI GABANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5405 of 2002

MR RASIK V MANDANI for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention dated 15.1.2002 passed by the Commissioner of Police, Surat City, in exercise of the powers vested in

him by section 3(2) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the PASA Act). According to the detaining authority, the petitioner is a "dangerous person" within the meaning of Section 2(c) of the PASA Act in reference to section3(4) of the PASA Act.

2. Having considered the grounds of detention, it is apparent that the petitioner was found involved in five different criminal offences punishable under Section 379 of the IPC. He has been found involved in lifting motorbikes parked at public places in the city of Surat. Last offence registered against the petitioner is dated 2.8.2001. It is one of the ground that the petitioner had acted in a rude manner and had given threats to one witness in connection with his activities on 21.12.2001. According to Mr. Mandani, the petitioner has been wrongly detained under PASA because of the alleged activities of the petitioner cannot be said to be activities affecting the "public Order" and he cannot be branded as "dangerous person" within the meaning of the PASA Act. Ld. Counsel for the petitioner has placed reliance on four different decisions; viz

i) Mustakmiya Jabbarmiya Shaikh vs. Commissioner of Police, 1995(2) GLR 1268;

ii) Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., 2000(1) GLH 393;

iii) Unreported decision rendered in Spl. Criminal Application No. 1681 of 1992 by the Division Bench of this Court (Coram: A.P. Ravani & J.M. Panchal, JJ.)

iv) Unreported decision rendered in Special Civil Application No. 10193 of 2001;

Relying on the aforesaid decisions, the ld. counsel has submitted that the order of detention cannot be sustained. This Court, has decided Special Civil Application NO. 4493 of 2002 wherein the petitioner has challenged the order of detention which was passed on the similar set of facts and after referring to and appreciating the above cited decisions, vide order judgment dated 19.6.2002 this Court has quashed the impugned order by giving detailed reasons. Hence, this petition also requires to be allowed and order of detention requires to be quashed and set aside as set of facts of both the cases are similar and in both the cases, ld. counsel have relied on above-cited decisions.

Hence, without reiterating the reasons assigned in the aforesaid petition and by adopting the reasons given in the said petition and treating the said reasons as reasons of this petition, petition requires to be allowed. Hence, without going into the merits of the matter and as ld. AGP Mr. Kogje has fairly admitted that this matter is covered by the decision of this Court given in petition viz. Spl. C.A. No. 4493/2002 and, therefore, he has not pressed for reasoned order and hence separate and independent reasons are not given in this order.

The co-detenu of the present petitioner was also detained for all these offences by the Police commissioner, Surat. While dealing with SCA No. 4126 of 2002 this court has quashed the order of detention. So, on the ground of parity, this petition shall have to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 15.1.2002 passed by Commissioner of Police, Surat City against the detenu is hereby quashed and set aside. Detenu is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case.

Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

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